

PSJ17 Exh 111

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION

4           IN RE:   NATIONAL PRESCRIPTION        ) No. 17-md-2804  
5           OPIATE LITIGATION NO. 2804         )  
6   )  
7           APPLIES TO ALL CASES                 ) Hon. Dan A. Polster  
8   )

9                   HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
10                  CONFIDENTIALITY REVIEW

11                   VIDEO DEPOSITION OF VALERIE KAISEN

12                                   January 18, 2019  
13                                   9:39 a.m.

14           Reporter:  John Arndt, CSR, CCR, RDR, CRR  
15                                   CSR No. 084-004605  
16                                   CCR No. 1186

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sworn, and examined on January 18, 2019, at  
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East, Suite 1700, in the City of Cleveland, State of  
3 Ohio, before John Arndt, a Certified Shorthand Reporter  
and Certified Court Reporter.

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1     accordance with guidance you got from the company, the  
2     company's knowledge that a physician had prescribed  
3     either Actiq or Fentora off-label in the past would not  
4     necessarily disqualify that physician for being a  
5     potential speaker for those two products; right?

6             A.     I don't have an answer to that. I wasn't  
7     privy to that decision.

8             Q.     So your answer is that you don't know, you  
9     weren't privy to that decision? Is that accurate?

10            A.     I nominate, they decide.

11            Q.     So you would agree with me then that if  
12     anyone at the company had ever told you that you  
13     shouldn't nominate or use a speaker for Actiq or  
14     Fentora if you knew that that person had prescribed  
15     off-label in the past, you would have followed that  
16     directive from your superiors; right?

17                   MR. MAIER: Objection. Form.

18            A.     Yes.

19            Q.     (By Mr. Faes) And we can agree that  
20     Dr. -- since Dr. Laham was ultimately approved by your  
21     superiors to be a Fentora speaker and they had this  
22     data, they must have been okay with the fact that he  
23     had prescribed Actiq off-label in the past --

24                   MR. MAIER: Objection.

1 Q. (By Mr. Faes) -- and that that didn't  
2 disqualify him from being a potential Fentora speaker;  
3 right?

4 MR. MAIER: Objection. Form, foundation.

5 A. Yes.

6 Q. (By Mr. Faes) Can I have you look back at  
7 the previous exhibit, which was Exhibit Number 18? So  
8 if you look at the second page of this document, it  
9 starts at the top. It says for your reference, the  
10 list of current hcpConnect speakers is below. Do you  
11 see that?

12 A. Uh-huh.

13 Q. And if you look about in the middle of the  
14 page, you see a Dr. Steve Simon from Leawood, Kansas;  
15 right?

16 A. Yes.

17 Q. So at this time in 2015, Dr. Simon was  
18 already an approved speaker for Fentora by the company;  
19 right?

20 A. Yes.

21 Q. And you actually used Dr. Steve Simon in  
22 your territory to give speaker programs throughout the  
23 years for both Fentora and Actiq; right?

24 A. Yes.

1 Q. And you were aware that -- were you aware  
2 that Dr. Steven Simon had actually been a --

3 A. Can we strike that? I don't remember on  
4 Actiq or Fentora. I remember I used him, but I'm not  
5 sure which product or both. I'm not sure. But I did  
6 use him, yes.

7 Q. But you know he was an approved speaker  
8 for both Actiq and Fentora; right?

9 A. Yes.

10 MR. MAIER: Objection. Form.

11 Q. (By Mr. Faes) And you know he gave  
12 speaker programs throughout the company -- or strike  
13 that. You know that he gave speaker programs for both  
14 Actiq and Fentora throughout various parts in the  
15 United States for the company; right?

16 A. Yes.

17 MR. MAIER: Objection. Foundation.

18 Q. (By Mr. Faes) And you're not saying that  
19 you didn't use Steven Simon in your territory? You're  
20 just saying you can't remember one way or the other as  
21 you sit here today; right?

22 A. I did use him in my territory. I just  
23 can't remember if it was Fentora or Actiq or both.

24 Q. (By Mr. Faes) Okay. So what you're

1 saying is you might have used him for Actiq -- strike  
2 that. You might have used him for Actiq or Fentora or  
3 both? You just can't remember one way or the other as  
4 you sit here today what you used him for; right?

5 A. Yes. Right.

6 Q. So I'm going to hand you what's been  
7 marked as Exhibit Number 20 to your deposition.

8 [Exhibit Teva-Kaisen-020  
9 marked for identification.]

10 Q. Sorry. That's his. That's yours. So  
11 many pieces of paper floating around. So Exhibit  
12 twenty --

13 A. I already saw that.

14 Q. So Exhibit Number 20 is an e-mail from  
15 Philip Tocco to you.

16 A. Uh-huh.

17 Q. And a Frank Mazzucco dated September 19th  
18 of 2006; right?

19 A. Yes.

20 Q. And the subject line is opportunity;  
21 right?

22 A. Yes.

23 Q. And this is an e-mail that would have been  
24 received by you; right?



1           A.     Yes.

2           Q.     And it states, hey, team. I wanted to  
3     share a great and rare opportunity with you. Dr. Simon  
4     will be able to conduct Fentora programs made during  
5     the Fentora launch. As you know, Dr. Simon is  
6     currently capped at the current time. An exception has  
7     been made for the remainder of the year pending the  
8     approval of Fentora. Dr. Simon will be available for  
9     an extra 25K in talks beginning at launch and ending  
10    December 31st. After this date, his total cap will  
11    return to 100K as before. Do you see that?

12          A.     Yes.

13          Q.     So this reflects that someone at the  
14    company is sending you an e-mail indicating that Dr.  
15    Simon is a approved speaker that you might want to  
16    consider to give talks about the Fentora product which  
17    is about to launch at this time; right?

18          A.     Yes.

19               MR. MAIER: Objection. Form, foundation.

20          Q.     (By Mr. Faes) And this indicates that he  
21    generally has a cap of \$100,000 a year. Is that your  
22    understanding from reading this?

23               MR. MAIER: Objection. Foundation.

24          A.     Yes.

1 Q. (By Mr. Faes) And it appears that he --  
2 did you understand -- strike that. Did you understand  
3 when you worked at Cephalon that the company generally  
4 had a policy not to pay speakers for any product more  
5 than \$100,000 in a single year?

6 A. Yes.

7 Q. And it looks like they're making an  
8 exception in this case because Dr. Simon is close to  
9 that \$100,000 cap, so they're approving him for an  
10 extra \$25,000 for the -- through the end of the year  
11 for the launch of Fentora; right?

12 MR. MAIER: Objection. Foundation.

13 A. Yes.

14 Q. (By Mr. Faes) So that would indicate that  
15 he had actually done quite a few speaker programs for  
16 Cephalon at this time if he's already at or approaching  
17 his \$100,000 cap; right?

18 MR. MAIER: Objection. Form.

19 A. If you say so.

20 Q. (By Mr. Faes) And if you go to the final  
21 sentence, this states that since time and money may be  
22 limited during the launch, I can say that Dr. Simon is  
23 quite good at conducting teleconferences, so that might  
24 be a great way of maximizing the use of Dr. Simon. Do

1     you see that?

2             A.     I do.

3             Q.     So this is direction from Mr. Philip Tocco  
4     at the company essentially endorsing Dr. Simon as a  
5     person who's good for conducting teleconferences on the  
6     Fentora product; right?

7                     MR. MAIER:  Objection.  Form.

8             A.     Yes.

9             Q.     (By Mr. Faes)  And he's recommending that  
10    you strongly consider using Dr. Simon for Fentora  
11    speaking programs in your territory or he wouldn't have  
12    sent it to you; right?

13                    MR. MAIER:  Objection.  Form, foundation.

14             A.     He's just saying FYI.  David Hennecke is  
15    the one that's saying it's a good opportunity.

16             Q.     (By Mr. Faes)  But that's the message that  
17    you would have received from the company upon getting  
18    this e-mail --

19             A.     Yes.

20             Q.     -- is that the company thought it was a  
21    good idea to use Dr. Simon for tele -- for a  
22    teleconference to do a speaker program for the Fentora  
23    launch; right?

24                    MR. MAIER:  Objection.  Form, foundation.

1           A.       Yes. I just wanted to qualify that you  
2       said that Phil Tocco had said that was a great and rare  
3       opportunity when it was really David Hennecke.

4           Q.       (By Mr. Faes) Right. He just forwarded  
5       it --

6           A.       Yes.

7           Q.       -- and it was David Hennecke that sent  
8       the initial e-mail; right?

9           A.       Yes.

10          Q.       Who was David Hennecke?

11          A.       I don't know what he was at that time.  
12       Manager or -- maybe manager or -- I forget what they  
13       call them. Managed care person. I'm not sure. I  
14       don't remember.

15          Q.       So during your time using Dr. Simon as a  
16       speaker for products within your territory, did you  
17       come to learn that prior to becoming a medical doctor,  
18       he had actually been a pharmacist?

19          A.       I did not know that.

20          Q.       And did you know that prior to becoming a  
21       pharmacist -- strike that. Did you know that prior to  
22       becoming a doctor when he was a pharmacist in Kansas  
23       City, he actually pled guilty to a felony of  
24       intentionally distributing controlled substances?

1 A. No idea.

2 Q. I'm going to hand you what's been marked  
3 as Exhibit Number 21 to your deposition.

4 [Exhibit Teva-Kaisen-021  
5 marked for identification.]

6 Q. And as you can see from the top, this is a  
7 document --

8 A. Wow.

9 Q. -- that indicates it's the State Board of  
10 Pharmacy versus Steve Simon and it's got a stamp of  
11 November 6th of 1975 at the top. Do you see that?

12 A. Okay. Yeah.

13 Q. And the complaint states that -- well, and  
14 it's versus Steve Simon, who's from Kansas City; right?

15 A. Right.

16 Q. And it's the -- Number 3 of the complaint  
17 states that the respondent was found guilty in the  
18 United States District Court for the Western District  
19 of Missouri on December 8th, 1975, of the offense of --

20 A. Wow.

21 Q. -- knowingly and intentionally  
22 distributing controlled substances; right?

23 A. Wow. Wow.

24 Q. And if you turn -- well, strike that.

1 So -- and if you see the -- at the bottom of the page,  
2 of the same page, it notes that the State Board of  
3 Pharmacy has determined that the conviction constitutes  
4 unprofessional conduct under the provisions of Section  
5 338.055, RSMo 1969, which provides in part the  
6 following specifications shall be deemed unprofessional  
7 or dishonorable conduct within the meaning of this  
8 section. Conviction of a felony. Do you see that?

9 A. Yeah.

10 Q. So apparently Dr. Steve Simon is a  
11 convicted felon; right?

12 A. Wow.

13 MR. MAIER: Objection. Foundation. Form.

14 A. Yes.

15 Q. (By Mr. Faes) And we saw from documents  
16 we looked at earlier that as early as 2006, the  
17 company -- people at the company were recommending that  
18 you use him as a potential speaker in your territory;  
19 right? He was on an approved list provided by the  
20 company; right?

21 A. Yes.

22 MR. MAIER: Objection. Form.

23 Q. (By Mr. Faes) And you had an expectation  
24 that if the company was sending you around an approved

1 list of speakers, the company would have done their due  
2 diligence in making sure that those people were  
3 appropriate speakers for the promotion of Fentora;  
4 right?

5 A. Yes.

6 Q. And you would never expect that the  
7 company would put somebody on that list who was a  
8 convicted felon; right?

9 MR. MAIER: Objection. Form.

10 A. Are you asking me right or yes or no? I  
11 would never have expected the company. So rephrase  
12 your question. The --

13 Q. (By Mr. Faes) You never -- my question  
14 is, you never expected that the company would put  
15 someone on the approved speaker list who was a  
16 convicted felon; right?

17 MR. MAIER: Objection. Form.

18 A. True.

19 Q. (By Mr. Faes) And certainly not one who  
20 was convicted of intentionally distributing controlled  
21 substances; right?

22 A. True.

23 MR. MAIER: Objection. Form.

24 Q. (By Mr. Faes) Which is the very type of

1 A. Yes, I am.

2 Q. I want to ask you a few more  
3 questions about Exhibit 3. I think it's in  
4 front of you. And this was the PowerPoint  
5 presentation from March of 2014, which was just  
6 a few months after you arrived at the company  
7 to start working, correct?

8 A. Correct.

9 Q. And if we look at page 3, as we  
10 discussed, there was a proposed DEA compliance  
11 organization, and as we discussed, there was a  
12 small restructuring or a few people moving  
13 around, according to this proposed  
14 organization; is that correct?

15 A. Correct.

16 Q. And did that small restructuring  
17 occur at that time; do you know?

18 A. I believe it did.

19 Q. Okay. And if you look at where you  
20 are, Joe Tomkiewicz, it states under you, you  
21 had one individual reporting to you, Matt  
22 Benkert; is that right?

23 A. That's correct.

24 Q. And his position was -- it



1 indicates he's an investigator; is that right?

2 A. Correct.

3 Q. So does that mean that he would be  
4 somebody who would actually be involved in  
5 investigating the suspicious orders?

6 A. Potential suspicious orders.

7 Q. Okay.

8 A. Investigating orders to determine  
9 if they're suspicious.

10 Q. I got you. Okay. And we'll talk  
11 about that process more, but I think what  
12 you're talking about is orders would be  
13 sometimes flagged or pulled aside or pended  
14 after going through the computer system or the  
15 algorithm, and then there would be an  
16 investigation of that to see if it was  
17 suspicious or not, correct?

18 A. Correct.

19 Q. Okay. Now, how many actually of  
20 the 16 employees in this organization or this  
21 department were actually involved in the  
22 investigation of suspicious orders or pended  
23 orders?

24 A. Oh, of pended orders? It was

1 A. They weren't exciting venues. Trust me.

2 Q. Where would -- I mean, where would you all  
3 usually meet? Just at a hotel or rent a conference  
4 room or something?

5 A. At a hotel in a city. I think we even had  
6 one in Cleveland -- I'm not sure -- many years ago.

7 Q. Was there a city that you typically met  
8 in?

9 A. Cincinnati a lot.

10 Q. Well, that's not very convenient for you.  
11 Okay. So turning to Page 4 of this document. We've  
12 got a slide titled top Fentora writers.

13 A. We're not there yet.

14 MR. BERG: Let's wait for it to come up.

15 MR. FAES: I think it's July 24. Uh-huh.  
16 They're not labeled, but I handwrote on all of my pages  
17 so I could tell him what page to go to.

18 A. Okay.

19 Q. (By Mr. Faes) So this is a slide entitled  
20 top Fentora writers, and this would have been  
21 information that was presented at the meeting in 2011;  
22 right?

23 A. Yes.

24 Q. And if you look at -- I think there's four

1 columns here that are yours, Valerie McGinley. If I  
2 can get Mike to highlight those. The first two are the  
3 fourth and fifth one from the top.

4 A. Uh-huh.

5 MR. FAES: Actually, if you can highlight  
6 them rather than call it out, because we're going to  
7 have to go above that.

8 Q. (By Mr. Faes) So at this time in 2011, as  
9 presented at this meeting, you had four of the top  
10 Fentora writers presented on this list, including the  
11 third highest and the fourth highest in the entire  
12 Great Lakes region; right?

13 A. Yeah.

14 Q. And your top prescriber was --

15 A. I can't look.

16 Q. -- Sami Moufawad. Your second one was  
17 Riad Laham. Your third one down was Jack Rutkowski,  
18 and your fourth one was Sandra Hazra. Do you see that?

19 A. Uh-huh.

20 Q. So in at least one of your top four  
21 prescribers, their primary specialty group is listed as  
22 a primary care provider; right?

23 A. Yes.

24 Q. So at this time in 2011, one of the top

1 four prescribers that you had of Fentora was not an  
2 oncologist or a pain specialist; he was a primary care  
3 provider; right?

4 A. Yes.

5 MR. MAIER: Objection. Form.

6 Q. (By Mr. Faes) And if you look at the  
7 second column on Dr. Gregory Gerber, he was actually  
8 the second highest prescriber at this time in the  
9 entire Great Lakes region; right?

10 MR. MAIER: Objection. Foundation.

11 A. It's making me dizzy. That's why I'm  
12 looking away. I was not calling on him in that time.

13 Q. (By Mr. Faes) Right. This is the time  
14 that we talked about where Nicole Reese was calling on  
15 him; right?

16 A. Right.

17 Q. And you actually got him back -- this is  
18 in June. I think you got him back in early July, so  
19 you got him back in your territory about a month after  
20 this; right?

21 A. Yeah.

22 Q. And when you got him back he would have  
23 been the second highest prescriber of Fentora in the  
24 entire Great Lakes region; right?